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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Logemann et al.

Serial No.: 09/729,141

Examiner: Prouty, Rebecca E.

Filed : December 1, 2000

Group Art Unit: 1652

For : TRANSGENIC PATHOGEN RESISTANT ORGANISMS

RESPONSE

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450, on:

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Date of Deposit

Lisa B. Kole

Attorney Name

Lisa B. Kole

Signature

35,225

PTO Reg. No.

December 22, 2004

Date of Signature

Mail Stop Reissue

Commissioner for Patents

Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the outstanding Office Action dated August 25, 2004 in the above-identified application, please consider the following remarks. Applicants request a one month extension of time and enclose the required fee as set forth in 37 C.F.R. § 1.17(a)(1).

The Examiner indicates that the reissue oath and declaration filed December 17, 2003 was defective, because it failed to contain the statement required under 37 C.F.R. §1.175(a)(1) as to the Applicants' belief that the original patent is wholly or partially inoperative or invalid, instead containing the phrase, "potentially inoperative." In addition, the Examiner

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indicates that the reissue specification contains preliminary amendments to the paper copy of the sequence listing and the designation of the assignee on the front page of the paper which do not comply with 37 C.F.R. §1.175(b)(1). The Examiner also indicates that receipt of an appropriate supplemental oath and declaration under 37 C.F.R. §1.175(b)(1) will overcome the rejection under 35 U.S.C. §251, provided that the oath contains the statement set forth at the bottom of page 2 of the Office Action.

In response, applicants submit herewith a Reissue Declaration and Power of Attorney ("Declaration"). The Declaration was revised to replace the reference to a patent that is "potentially" inoperative, with a reference to a patent that is "wholly or partly" inoperative. In addition, the Declaration contains language concerning errors in the patent not covered by prior oath and declaration, indicating that they also arose without any deceptive intent on the part of the Applicants.

The Declaration has also been amended to have the legal successor to Jeff Schell, the fifth inventor, execute the Declaration in his place due to his recent death. Therefore, Elizabeth Schell-Frederick, widow to Jeff Schell, has signed on page 9 of the Declaration on behalf of Jeff Schell. Attached to the Declaration is a copy of the Document of Successorship and an English language translation of the document.

For the foregoing reasons, Applicants respectfully request withdrawal of the rejection of claims 1 and 2 based on a defective reissue declaration under 35 U.S.C. §251.

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CONCLUSION

In view of the foregoing remarks, Applicants respectfully request withdrawal of the outstanding rejection and allowance of pending claims 1 and 2.

Applicants requests a one month extension of time and enclose herewith the requisite fee as set forth in 37 C.F.R. § 1.17(a)(1). Applicants do not believe that any additional fee is required in connection with the submission of this document. However, should any fee be required, or if any overpayment has been made, the Commissioner is hereby authorized to charge any fees, or credit any overpayments made, to Deposit Account 02-4377. A duplicate copy of this sheet is enclosed.

Respectfully submitted,



Lisa B. Kole

Patent Office Reg. No. 35,225

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